

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

LARRY JENKINS,

Petitioner,

v.

CIVIL ACTION NO. 2:05CV92

THOMAS McBRIDE, Warden,

Respondent.

**RECOMMENDATION THAT APPLICATION TO PROCEED
IN FORMA PAUPERIS BE DENIED**

On December 20, 2005, *pro se* petitioner, Larry Jenkins, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application for leave to proceed *in forma pauperis*. The petitioner provided the Court with an affidavit, his trust account report and ledger sheets from his prisoner trust account which reveal that he had an account balance of \$25.08 as of December 14, 2005. Consequently, the petitioner has sufficient funds to pay the \$5.00 filing fee.

Therefore, because the petitioner has not sufficiently demonstrated that he is financially unable to pay the filing fee in this matter, the undersigned recommends that the petitioner's application to proceed *in forma pauperis* be **DENIED**.

The petitioner may file within ten (10) days from the date of this Recommendation, with the Clerk of the Court written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the District Court Judge of Record. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this

Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to mail a copy of this Recommendation to the *pro se* petitioner.

DATED: January 23, 2005

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE